

**RESPONSE TO ELIGIBILITY CRITERIA FOR EQUITY ELIGIBLE CONTRACTOR
REQUEST FOR COMMENTS ON BEHALF OF THE SOLAR ENERGY INDUSTRIES
ASSOCIATION, COALITION FOR COMMUNITY SOLAR ACCESS, AND ILLINOIS
SOLAR ENERGY ASSOCIATION**

May 5, 2023

The Solar Energy Industries Association, Coalition for Community Solar Access, and Illinois Solar Energy Association (collectively the “Joint Solar Parties” or “JSP”) appreciate the opportunity to respond to the IPA’s request for comments regarding proposed changes to eligibility criteria for Equity Eligible Contractors (“EECs”).

Introduction

Public Act 102-0662 (also known as the Climate and Equitable Jobs Act, or CEJA) introduced for the first time in the Illinois Power Agency Act the concept of EECs and “Eligible Persons” (“EPs”), the natural persons that must own the majority of a company or other entity for it to qualify as an EEC. The Joint Solar Parties are staunch believers in the goals behind the concept of EECs, specifically to identify businesses owned by members of disadvantaged communities for investment and opportunity. While the Joint Solar Parties do not agree with every aspect of the statute (for instance, the race-neutral statutory definition leaves out many Black-owned, Latinx-owned, and other minority-owned businesses), the Joint Solar Parties strongly support opportunities for disadvantaged communities to enter into and thrive within the solar industry. As a result, the Joint Solar Parties agree with the IPA that the EEC programs should be designed to provide opportunities for businesses owned by members of disadvantaged communities rather than individuals who technically comply with statutory minimums but not the spirit.

Specifically, the Joint Solar Parties categorically oppose rent-seeking behavior or “sleeving” where an EP lends their name in exchange for some sum of money but undertakes little work, training, or development. The Joint Solar Parties share the IPA’s desire to eliminate this behavior going forward.¹ The Joint Solar Parties are concerned that if loopholes are not closed, the new entrants that the EEC program was intended to benefit will see diminished opportunities.

As part of the Joint Solar Parties’ support for businesses owned by members of disadvantaged communities, the Joint Solar Parties also strongly believe that any program design intended to target benefits to members of disadvantaged communities should not inadvertently make the pathway for success even narrower. As the Joint Solar Parties have noted many times before the Commission and the IPA, the EEC program should not ask an EEC-Approved Vendor to execute on a series of discrete and very different scopes (develop, construct, finance, and own/operate for at least six years) when even many long-established solar companies only focus on certain aspects. EEC-Approved Vendors forced to take on all of these roles—not to mention raising money through debt or equity and likely putting personal funds at risk—will face tremendous risk that most if not virtually all will seek a third party (such as an established industry participant) to mitigate.

An established industry participant can provide great value to EECs including:

¹ Although the Joint Solar Parties do not agree with the actions taken by every market participant, the Joint Solar Parties generally speaking prefer *prospective* relief rather than reconsideration of past awards.

- Making lump payments (rather than advances) at earlier milestones (such as project selection, sale or third-party financing of the project, mechanical completion) than provided for under the REC Contract.
- Assuming risk (such as program risk) to prevent the EEC from having a total loss through an inadvertent oversight or mistake.
- Taking on aspects of the project lifecycle the EEC prefers not to manage or does not believe it is ready to manage (such as an EEC that starts out as a construction company may expand early into development but take longer to work with tax equity financing). This is especially true of financing where a larger balance sheet and industry experience that an established industry participant can bring are likely to make a major economic difference—or be the difference for availability of some financing opportunities in the first place.
- Providing vetted form documents (such as a PPA/lease/subscription) or sales channels that an EEC would otherwise have to devote substantial resources to ensure is compliant with ABP and Illinois requirements.

Of course, an EEC could decide that it prefers to handle more of the project lifecycle itself or that it prefers to use and manage outside vendors. The Joint Solar Parties of course support and applaud EECs that succeed in that model. The Joint Solar Parties expect that there are or will be EECs capable of doing so from the get-go that are not a joint venture with an established industry participant. However, the Joint Solar Parties expect that some if not many EPs would prefer to at least start in the business or scale up with more support.

The Joint Solar Parties thus urge the IPA to craft future EEC programs to both close sleeving or rent-seeking loopholes while also ensuring EECs are able to work with established industry participants to mitigate risk, accelerate payment, and/or receive training beyond what job training or accelerators can provide. While sleeving or rent-seeking may involve established industry participants, the converse—that involvement of established industry participants with EECs is automatically sleeving or rent-seeking—is not accurate.

Proposed Solutions

The Joint Solar Parties view the solution as relatively straightforward with two primary prongs:

- **Developer Cap.**
 - The definition of affiliated entities should be revised so that two EECs with a common EP are *per se* affiliated. This prevents one or a small handful of EPs from monopolizing opportunities by working with multiple different EECs (whether separate companies or joint ventures with different established industry participants).
 - While the Joint Solar Parties do not believe that a smaller developer cap is necessary at this time (especially in Group A where the current cap is approximately 10 MWac), the Joint Solar Parties suggest that if substantial additional capacity is added then the IPA consider whether a lower cap is prudent.
- **Additional Obligations.** The Joint Solar Parties support specifically for joint ventures between one or more EPs and established industry participants. The Joint Solar Parties recommend the following additional obligations on EEC JVs in order to qualify to participate in the EEC or TCS Block:

- Each JV must have a development plan that either details the role of the EPs in the development, construction, financing, and/or operation of the system or otherwise provides for training of other EPs involved in the project, that the IPA can accept as proof of EP engagement. This plan should be assessed to ensure meaningful benefit (beyond financial gain) is accruing to the EEP.
- Any EEC that performs work on a project for the purpose of earning points under the Traditional Community Solar Block must attest and certify that a meaningful level of work has been performed by the EEC and not merely subcontracted to another non-EEC entity.

Through these changes, the Joint Solar Parties believe the opportunities for sleeving will be greatly reduced but new entrants will still be able to receive value from working with established industry participants.

The Joint Solar Parties also wish to note that while the Joint Solar Parties have taken litigation positions against points systems in some contexts (such as traditional community solar), the tricky evaluation of genuine EP involvement and benefit may require qualitative review by the IPA. Getting the right questions and evaluation criteria may not be easy and may never completely eliminate all sleeving, the Joint Solar Parties believe in this case a qualitative review of EP involvement will meet the twin goals of encouraging businesses owned by members of disadvantaged communities and preventing sleeving or rent-seeking.

Responses to Specific Questions

1. Should an Equity Eligible Person be able to serve as the qualifying EEP for more than one Equity Eligible Contractor?

- a. The Agency is concerned that allowing a single Equity Eligible Person to serve as the majority-owner of multiple Equity Eligible Contractors could result in concentration of the benefits of state incentives, where the benefits that are supposedly going to multiple companies are in fact benefitting a single person.

JSP RESPONSE: Please see above the Joint Solar Parties’ developer cap proposal. While the Joint Solar Parties do not object to the same EP owning portions of multiple EECs, the Joint Solar Parties recommend placing a constraint (the developer cap) on the collective opportunity of all EECs with an EP in common.

2. Should the Agency require additional demonstrations of equitable impact for companies seeking EEC certification based on majority-ownership of a silent partner Equity Eligible Person? If so, what might those entail?

- a. The Agency is concerned about ownership arrangements that may enable large, established, non-EEC companies to access state incentives intended to support companies facing barriers to business opportunities. The statutory requirement that an Equity Eligible Contractor be majority-owned by eligible persons loses its meaning if the minority owner is a large company and the majority-owner eligible person is a silent partner that would otherwise have no involvement in the solar sector – neither party is a person seeking to access the economic opportunities created by CEJA and facing discriminatory barriers in

doing so. Below are some potential strategies for preventing such gaming, with the Agency open to implementing one or all of them, depending on stakeholder feedback.

JSP RESPONSE: The Joint Solar Parties agree that an EP should not be a “silent partner” (in a colloquial sense when the EEC corporate structure is not a limited partnership). As noted above, the Joint Solar Parties recommend requiring additional indicia that the EP owner(s) are involved (including receiving meaningful training) or that EPs are otherwise benefitting in substantive ways that exceed financial benefit. The Joint Solar Parties wish to emphasize that the spirit of their recommendation is not to tacitly allow sleeving but to allow EPs that are entering the industry to learn in a more risk-limited environment.

- b. For companies where the minority share is owned by another company, not a natural person, should the agency require that the applicant must demonstrate one (or more) of the following:
 - i. There is a contractual agreement guaranteeing the eventual increase in ownership share of the Equity Eligible Person.
 - ii. The company is located in an equity investment eligible community.
 - iii. The company is also a small and emerging business.
 - iv. The company employs local residents.
 - v. The company employs dislocated energy workers.
 - vi. The company employs an elevated percentage of EEPs above the minimum equity standard.

JSP RESPONSE: Assuming that the minority shareholder is an established industry participant (rather than another EEC), none of these criteria except perhaps the final criteria should be required. The Joint Solar Parties would not object to the second through fifth criteria being part of the IPA’s qualitative review recommended above, however.

Additionally, the Joint Solar Parties recommend that for any partnership whereby an established industry participant serves as minority partner and an EEP serves as the majority partner, the Agency should conduct a qualitative review to ensure the majority partner achieves substantive benefit beyond financial gains. These could include:

- **Training and guidance to scale their business**
 - **Introductions and connections to other industry partners**
 - **Favorable financing arrangements**
- c. If the Agency does require one or more of the above additional showings for companies seeking EEC-certification, should it do so only where the minority owner is a large company or where EEP owns less than a certain percentage of the company?

JSP RESPONSE: The Joint Solar Parties note that the size of the non-EEC minority owner should be irrelevant—some established market participants are small in headcount or

(relatively speaking) profit but experienced and successful. To the extent there are requirements imposed on entities where a non-EEC is a minority owner, it should be imposed universally.

3. To increase the transparency regarding companies that qualify as an Equity Eligible Contractor and submit projects to the Equity Eligible Contractor Category, what information might the Agency require be published on the ABP website?

- a. Name of companies certified as EECs?
- b. Ownership structure and shares?
- c. Basis upon which the majority-owner(s) qualified as EEP?

JSP RESPONSE: The Joint Solar Parties agree with the names of EEC-certified companies. The Joint Solar Parties would also not object to disclosure of the name of the non-EEC minority owner if it is an Approved Vendor or affiliated with an Approved Vendor. The Joint Solar Parties note that the ownership structure and shares do not necessarily tell the story of whether sleeving or rent-seeking is occurring and the Joint Solar Parties fear that unfortunate stigmas around returning citizens (and to a lesser degree alums of the foster care system) has the potential to hurt those Approved Vendors more than it will help.

4. What forms of documentation could IPA require all companies applying for certification as an Equity Eligible Contractor to submit that would verify the claimed ownership structure? Options include, but not limited to:

- a. Articles of incorporation
- b. Governance documents
- c. Tax documents

JSP RESPONSE: The Joint Solar Parties note the Articles of Incorporation provide next to no information, but the governance and tax documents are highly intrusive and should not be required. A qualitative review should focus on value add to EPs, which is not necessarily reflected in governance documents or tax documents.

5. Are there variations on the above that strike a better balance? For example, the Agency could implement a prioritization system within the Equity Eligible Contractor category based on the above factors, providing bonus points for EECs that meet one or more of those criteria and selecting projects based on points received. Alternatively, the Agency could reserve a portion of that capacity for entities that meet some of the above factors – what might be a reasonable reserve portion to ensure state incentives benefit the intended actors?

JSP RESPONSE: The Joint Solar Parties have provided their recommendation above.